IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:04.12.2009
CORAM:
THE HON'BLE MR.JUSTICE P.JYOTHIMANI
WRIT PETITION NO.1928 OF 2007
AND M.P.NO.1 OF 2007
..
The Nasiyanur Co.operative Housing
Society Limited,
No.AA307, Nasiyanur
Erode District rep. By its
Paid Secretary P.Easwaramoorthy. .. Petitioner
vs.
1.Mrs.V.Kolandayammal

2.The Registrar of Co.operative
Societies (Housing)
Salem Region
179, Adhwaitha Ashram Street
Opp.New Bus Stand
Salem 3.

3.The Co.operative Housing Arbitrator
The Nasiyanur Co.operative
Housing Society Ltd.,
Nasiyanur, Erode Taluk.

4.The Principal District Judge
Erode District, Erode. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari as stated therein.

For petitioner : Mr.P.K.Rajagopal
For respondents : Mr.N.Manoharan for R.1

Mr.T.Seenivasan
Addl. Government Pleader for R2&3
...
ORDER

The interesting point that has been raised in this case is, as to whether the interest as awarded in the judgment of the learned Prl. District Judge, Erode, in an appeal filed under Section 152 of the Tamil Nadu Co-operative Societies Act,1983, which is payable at the rate of 6% per annum from the date of the suit as against the contractual rate of interest, is permissible in law?

2. The Nasiyanur Co-operative Housing Society is the petitioner in this writ petition challenging the judgment of the fourth respondent dated 2.02.2006 rendered in CMA.No.69 of 2004 and to quash the same.

2(a). The first respondent, borrowed a sum of Rs.1,20,000/- from the petitioner Society for the construction of house on 20.09.1995 and the borrowal was based on the mortgage deed, by which she agreed to repay the loan with interest at the rate of 16.5% per annum. Since the said amount was not paid by the first respondent, the petitioner Society preferred an arbitration suit before the third respondent, the Arbitrator, for recovery of an amount of Rs.1,48,540/- together with interest thereon and the same was numbered as ARC.No.62 of 1999-2000 and a decree was passed for a sum of Rs.2,33,209/- on 12.10.2002.
2(b). Thereafter, the petitioner Society filed an execution petition to implement the said decree and it was at that time, as against the award of the Arbitrator, the first respondent filed an appeal under Section 152 of the Tamil Nadu Co-operative Societies Act,1983 before the Prl.District Judge, Erode, the 4th respondent herein.
2(c). The main contention of the first respondent in the appeal was that some of the amounts paid by the first respondent had not been given credit to and the petitioner Society ought not to have charged 16.5% interest. The said appeal was allowed by the 4th respondent, setting aside the award of the third respondent, holding that the rate of interest, viz., 18% per annum awarded by the Arbitrator is not valid in law and remanded the matter back to the Arbitrator with direction that interest to be calculated only at the rate of 6% per annum from the date of the suit and that the waiver of Rs.63,500/- towards penal interest is to be properly accounted for and also directed the third respondent to pass fresh orders, after giving opportunity to both the parties.
2(d). It is, as against the said Judgment of the 4th respondent, the present writ petition is filed by the petitioner Society on the ground that the order is against the provisions of the Tamil Nadu Co-operative Societies Act,1983; that the above judgment was made in gross erroneous appreciation of facts and circumstances; that the direction to waive penal interest is without basis; that the discussion in respect of Order XXXIV Rule 11 of the Code of Civil Procedure relates to the Scheduled Banks and Nationalised Banks and not the Co-operative Societies, since the Co-operative Societies themselves are borrowing money at the rate of 15.5.% per annum and what is charged from the parties is 1% excess, viz., 16.5% and that therefore, the impugned judgment is not valid in law.

3. It is the main contention of the learned counsel for the petitioner Mr.P.K.Rajagopal that, in the arbitration proceedings and appeals under the provisions of the Tamil Nadu Co-operative Societies Act,1983, (in short, "the Act") either Section 34 of the Code of Civil Procedure (CPC) or Order XXXIV Rule 11 of CPC, has no application. According to him, the the decree in arbitration suit is a money decree and it cannot be said to be a decree against a mortgage debt. Therefore, it is the agreed interest, which is liable to be paid by the first respondent/borrower.
3(a). It is his further submission that the judgments reported in N.M.Veerappa vs. Canara Bank (AIR 1998 SC 1101) and A.S.Ramakrishnan vs. Bank of Baroda (2001 (1) CTC 662), on which reliance was placed by the learned District Judge, have no relevance to the facts of the present case, since they arose under Section 21-A of the Banking Regulations Act and therefore, Order XXXIV Rule 11 of CPC, was applied. It is his contention that in those cases the Nationalised Banks have filed suits on the basis of mortgage and therefore, the applicability of Order XXXIV Rule 11 cannot be questioned, but in the present case, the dispute raised under Section 90 of the Act was only for recovery of money and in the circumstances, arbitration suit cannot be filed as a mortgage suit under Section 90 of the Act and the claim has to be treated as a money suit. It is only due to the reason that the arbitration award passed under Section 90 of the Act should be treated as money decree, Section 34 of CPC has been expressly excluded.
3(b). It is also his contention that by applying Order XXXIV Rule 11 of CPC, treating it as a mortgage decree and reducing the quantum of interest is an injustice that has been done to the Co-operative Societies concept, especially in the circumstance that the petitioner, Co.operative Society has borrowed amount at the rate of 15.5% and entered into contract with the first respondent and others for interest at the rate of 16.5%, by having the benefit of 1% margin and therefore, the rate of interest cannot be reduced to 6%.

3(c) It is also his further case that the Co-operative Tribunal sitting under Section 152 of the Act and exercising jurisdiction under the said Section as an appellate authority against the award passed under Section 90 of the Act is a persona designata and not a civil Court and therefore, the powers under Order XXXIV Rule 11 of CPC cannot be invoked and according to him, it applies only to a suit for redemption, sale or foreclosure on mortgage.
3(d). It is his contention that by construing Rule 168 of the Tamil Nadu Co-operative Societies Rules,1988 which enables the Tribunal to follow the Code of Civil Procedure as far as practicable, it does not mean that provisions of Order XXXIV of CPC should be made applicable. There is no question of scaling down the interest which would result in jeopardy to the Co-operative movement.
3(e) He would also relied upon the judgment in Madurai City Co.operative Housing Society Ltd., vs. Special Tribunal for Co.operative Cases, Madurai (1999 (2) CTC 407). It is also his submission that by correlating Rule 126 of the Tamil Nadu Co-operative Societies Rules,1988 with Section 90 of the Act, the award passed can only be a money decree and it cannot be said to be a mortgage decree.

4. On the other hand, it is the contention of Mr.N.Manoharan, learned counsel appearing for the first respondent that on fact, it is clear in this case that the first respondent has mortgaged the property in favour of the petitioner Society and even if it is a money award being passed, it is in effect based on the charge created over the property. He would rely upon the judgment in A.S.Ramakrishnan vs. Bank of Baroda (2001 (1) CTC 662) to substantiate his contention that Order XXXIV Rule 11 of CPC is applicable and therefore, according to the learned counsel, the decision of the Co-operative Tribunal does not warrant any interference.

5. I have heard the learned counsel for the petitioner as well as the respondents and given my anxious thoughts to the issue involved in this case.

6. On the admitted facts, the Co-operative Tribunal by exercising powers under Section 152 of the Act, has applied the principles of Order XXXIV Rule 11 of CPC, held that the debt is a mortgage debt and therefore the petitioner Society is entitled to interest only at the rate of 6% per annum from the date of the suit till date of payment, instead of 18% interest as awarded by the Arbitral Tribunal, and it is that aspect of the judgment of the Tribunal which is in issue in this case.

7. The arbitral Tribunal passed the award under Section 90 of the Act and granted 18% interest to the petitioner Society. The complaint of the first respondent before the Tribunal was that certain amounts have not been given credit to and the waiver of penal interest to the extent of Rs.63,500/- as admitted by the petitioner Society in the memo has not been given credit to. The Tribunal, on appreciation of facts has concluded that various amounts paid by the first respondent have not been given credit to by the petitioner. The Tribunal has also concluded that the petitioner has not given credit to the amount of waiver of penal interest viz., Rs.63,500/-. While considering the short point, the Tribunal has concluded that the suit filed under Section 90 of the Act was based on mortgage and therefore,the provisions of Order XXXIV Rule 11 of CPC would apply and relying upon the judgment in A.S.Ramakrishnan vs. Bank of Baroda (2001 (1) CTC 662), the Tribunal has calculated the interest at the rate of 6% per annum. The Tribunal has also relied upon the judgment of the Supreme Court in N.M.Veerappa vs. Canara Bank (AIR 1998 SC 1101) and held that Order XXXIV Rule 11 of CPC would apply and that the petitioner Society is entitled for interest only at the rate of 6% per annum.

8. Section 90 the Act speaks about the Settlement of Disputes. It specifically states about 'a dispute' in Explanation (i) which is as follows:
"90. Disputes:
xxxxx
Explanation.-For the purpose of this section, a dispute shall include-

(i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member whether such debt or demand be admitted or not."

9. Section 90(8) of the Act which is as follows:

" 90.(8). Nothing contained in Section 34 of the Code of Civil Procedure,1908 (Central Act V of 1908) shall apply to any decision passed or award made under this section."
excludes the operation of Section 34 of CPC, which relates to awarding of interest in respect of money claim and Section 34 of CPC is as follows:

" 34. Interest.-(1) where and in so far as a decree is for the payment of money, the Court, may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:
[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest of where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.
Explanation I. - In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act,1970 (5 of 1970).
Explanation II. - For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]
(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

By such conscious exclusion of the rule in Section 34 of CPC, it can be safely presumed that the right of the Court in a money decree to order interest from the date of the suit till the date of the decree at a rate not exceeding 6% per annum, which is in addition to the interest adjudged on the principal sum for the period prior to the institution of the suit is taken way, in respect of arbitration proceedings of settlement of disputes under Section 90 of the Act.

10. Under Section 90 of the Act, the claim of the registered Society is stated to be a debt or demand and that is not restricted to the debt due by way of money decree and it would cover a debt due by any other means including the one based on security, which may either be mortgage or otherwise, and therefore it cannot be said that a claim made by the registered Society should be only a money claim. The Registrar under Section 90 of the Act may take a decision on the claim made by the registered Society, which may be either due under promissory note or secured by way of mortgage, and so on. In the absence of any exclusion of a mortgage debt from the claims to be made before the Registrar, it is not possible to hold that only the claim on money debt should be made before the Registrar and no claim should be made in respect of a debt secured by proper security like, mortgage. By excluding Section 34 of CPC, the Act only takes away the power of the Registrar from the power of the Civil Court in a money decree in awarding interest under the said section. Rule 120 of the Rules, while explaining the mode of proceeding against the properties of the judgment debtor as per the award passed under Section 90 of the Act gives an option to the decree holder to proceed against the immovable property under mortgage or any other immovable property to secure the amount. The said Rule 120 is as follows:

" 120. Mode of proceeding against the properties of judgment debtor.-
(1) The decree-holder may indicate in his application made under sub-rule (1) of Rule 116, whether he wishes to proceed in the first instance, against the immovable property mortgaged to the decree-holder or any other immovable property or to secure the attachment of movable property.
(2) Unless the decree-holder has indicated in his application, the order in which property of the judgment-debtor shall be proceeded against, execution shall, ordinarily, be taken in the following manner, namely:-
(i) movable property of the judgment-debtor shall be first proceeded against, but nothing in this clause shall preclude the immovable property being proceeded against simultaneously in case of necessity.
(ii) If there is no movable property, or if the sale proceeds of the movable property or properties attached and sold are insufficient to meet in full the demand of the decree holder, the immovable property mortgaged to the decree-holder or other immovable property belonging to the judgment-debtor, may be proceeded against."

11. The power of recovery by way of execution as contemplated under the said Rule along with Rule 116 is based on Section 143 of the Act, which makes it clear that the recovery of the amount is possible in respect of a decree passed by a civil Court or a decision or award of the Registrar, which includes the award passed under Section 90 of the Act. Section 143 of the Act is as follows:
" 143. Power of the Registrar to recover certain sums by attachment and sale of property.- The Registrar or any person subordinate to him empowered by the Registrar in this behalf may, subject to the rules and without prejudice to any other mode of recovery provided by or under this Act, recover-
(a) any sum due under a decree or an order of a civil Court, a decision or an award of the Registrar or any person subordinate to and empowered by the Registrar or Arbitrator or Arbitrators or an order of the Registrar.
Explanation.- For the purpose of this clause, "Registrar" and "Arbitrator" shall also include the Registrar of the State having reciprocal arrangements with the State of Tamil Nadu and Arbitrator appointed by such Registrar; or
(b) any sum due from a registered society or from an officer, former officer, member or past or deceased member of a registered society as such to the Government including any costs awarded to the Government in any proceeding under this Act; or
(c) any sum ordered to be paid towards the expenses of a general meeting of a registered society called under sub-section (4) of Section 32 or sub-clause (ii) of clause (e) of sub-section (2)of Section 81; or
(d) any sum awarded by way of costs under Section 85 to a registered society including a financing bank; or
(e) any sum awarded under Section 139 to be recovered as a contribution to the assets of a registered society or as costs of liquidation; or
(f) any sum ordered under Section 87 to be repaid to a registered society or recovered as a contribution to its assets; or
(g) any amount due under a certificate granted by the Registrar under sub-section (1) of Section 150;
together with the interest, if any, due on such sum and the costs of process, by the attachment and sale or by the sale without attachment of the property of the person against whom such decree, decision, award, order or certificate, has been obtained or passed."

12. A reading of Rule 126(1), which is as follows:

" 126. Procedure in attachment and sale of immovable property.-

(1) Immovable property shall not be sold in execution of a decree unless such property has been previously attached:
Provided that where the decree has been obtained on the basis of a mortgage of such property, it shall not be necessary to attach it."

makes it clear that a decree can be obtained under the Act on the basis of a mortgage of property, in which event the immovable property, subject matter of the mortgage can be sold, however, subject to the condition that such property has been previously attached. Therefore, there is no distinction between a money debt and a mortgage debt for settlement of dispute under Section 90 of the Act by the Registrar. The conscious exclusion of Section 34 of CPC does not mean that Order XXXIV Rule 11 of the Code also stands excluded.

13. Now, we can refer to Order XXXIV Rule 11,which is as follows:
"Order XXXIV Rule 11. Payment of interest.-
In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, Court may order payment of interest to the mortgagee as follows, namely:-
(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage-
(i)on the principal amount found or declared due on the mortgage, - at the rate payable on the principal, or where no such rate is fixed, at such rate as the Court deems reasonable,
(ii)Omitted; and
(iii)on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money, - at the rate agreed between the parties, or failing such rate, [at such rate not exceeding six per cent per annum as the Court deems reasonable]; and
(b) subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with the clause at such rate as the Court deems reasonable."

If the claim is on a mortgage, the interest under Order XXXIV Rule 11 is calculable under three circumstances, viz.,
(i)on the principal amount due under the mortgage at the rate of interest payable as per the mortgage deed and if no rate is fixed at the discretion of the Court;
(ii)On the amount due to the mortgagee for costs, charges and expenses in respect of mortgage security upto the date of preliminary decree added to the mortgage money at the agreed rate of interest between the parties, failing which the Court should fix the rate not exceeding 6% per annum;
(iii)Subsequent interest up to the date of realisation at the rate of interest to be fixed by the Court as reasonable.

14. On a reference to Section 34 of CPC, it is clear that the section applies only to a simple money decree in respect of which the Court has power to fix the interest at the rate specified therein. Even though under Section 90 of the Act, the purview of Section 34 of CPC has been dispensed with, that is only for the purpose of excluding, from the powers of the Registrar under Section 90 of the Act, the Civil Court's power conferred under Section 34 of CPC in respect of money decree and it does not mean that a money claim is excluded from the purview of the dispute under Section 90 of the Act for, a claim or debt under Section 90 of the Act by the registered Society can either be a money claim or a mortgage claim. If the claim is a money claim, then the Registrar can exercise his powers under Section 90 of the Act by excluding the powers of the civil Court under Section 34 of CPC in respect of rate of interest. If it is a claim on mortgage, inasmuch as other provisions of the CPC are

not excluded, especially Order XXXIV Rule 11 CPC, the said provision is certainly applicable to the proceedings of the Tamil Nadu Co-operative Societies Act either under Section 90 or to an appeal under Section 152 of the Act.

15. The Supreme Court in N.M.Veerappa vs. Canara Bank (1998 (2) SCC 317) has held that Section 34 of CPC applies only to a simple money decree and as far as the mortgage suits are concerned, it is only Order XXXIV Rule 11 of CPC is applicable. The relevant portion of the judgment is as follows:

" 8. Section 34 of the Code of Civil Procedure applies to simple money decrees and payment of interest pending such suits. Order 34 Rule 11 CPC deals with mortgage suits and payment of interest. It is obvious that so far as mortgage suits are concerned, the special provision in Order 34 Rule 11 alone is applicable and not Section 34. This has been laid down in several decisions of this Court and also by the Karnataka High Court in Thulasi Bai case (ILR 1985 Kant. 2976)."

16. In the said judgment, the Supreme Court has crystalised the tilting legal position under Order 34 Rule 11 of CPC in para 18, which is as follows:

" 18. From the aforesaid ruling the following principles can be summarised. (a) Before 1929, it was obligatory for the Court to direct the contract rate of interest to be paid by the mortgagor on the sum adjudged in the preliminary decree, from the date of suit till the date fixed for payment as per Order 34 Rule 2(c)(i) or Order 34 Rule 4(1) or Order 34 Rule 7(c)(i), respectively in suits for foreclosure, sale or redemption. (b) But after the 1929 Amendment, because of the words used in the main part of Order 34 Rule 11, namely that "the Court may order payment of interest" it is no longer obligatory on the part of the Court while passing preliminary decree to require payment at the contract rate of interest from date of suit till the date fixed in the preliminary decree for payment of the amount. It has been so held in Jaigobind case by the Privy Council and by this Court in S.P.Majoo case that the new provision gives a certain amount of discretion to the Court so far as pendente lite interest is concerned and subsequent interest is concerned. (c) It is no longer obligatory to award the contractual rate after date of suit and up to the date fixed for redemption as above stated even though there was no question of the contractual rate being penal, excessive or substantially unfair within the meaning of the Usurious Loans Act,1918. (d) Even if the Court otherwise wants to award interest, the position after the 1929 and 1956 Amendments is that the Court has discretion to fix interest from date of suit under Order 34 Rule 11(a)(i) up to date fixed for payment in the preliminary decree, the same rate agreed in the contract, or, if no rate is so fixed, such rate as the Court deems reasonable on the principal amount found or declared due on the mortgagor is concerned. (e) The Court has also power to award from the date of suit under Order 34 Rule 11(a)(iii) a rate of interest on costs, charges and expenses as per the contract rate or failing such rate, at a rate not exceeding 6%. This is the position of the discretionary power of the Court, from the date of suit up to the date fixed in the preliminary decree as the date for payment. (f) Again under Order 34 Rule 11(b) so far as the period after the date fixed for payment is concerned, the Court, even if it wants to exercise its discretion to award interest up to date of realisation or actual payment, on the aggregate sums specified in clause (a) of Order 34 Rule 11, could award interest at such rate as it deemed reasonable."

The Supreme Court has also held that for granting interest after the date of filing the suit, it is no more obligatory to grant contractual rate and certain amount of discretion is vested with the Court. There is no reason to conclude that the said ruling is not applicable to the settlement of a dispute made under Section 90 of the Act.

17. This has also been the view of the Division Bench of this Court consisting of P.Sathasivam,J.(as His Lordship then was) and P.Thangavel,J. in A.S.Ramakrishnan vs. Band of Baroda, Madurai (2001

(1) CTC 662). The relevant portion of the judgment is as follows:
" 16 ..... Though the decisions in State Bank of India vs. Yasangi Venkateswara Rao (AIR 1999 SC 897) and Corporation Bank vs. D.S.Gowda and another (1994 (5) SCC 213 : JT 1994 (7) SC 87) support the case of the respondent Bank, in view of the direct decision of the Supreme Court in N.M.Veerappa's case, AIR 1998 SC 1101 : 1998 (1) CTC 219, wherein it has been held that after the 1929 and 1956 Amendments, the Court has discretion to fix pendente lite interest and subsequent interest under Order 34 Rule 11 CPC, we are of the view that Order 34 Rule 11 CPC, alone applies to the present suit which is based on mortgage deed. Accordingly, we hold the plaintiff Bank is entitled interest only at the rate of 6 per cent per annum from the date of suit till date of payment. Consequently, the direction of the Court below granting 18 per cent interest from the date of suit till date of payment cannot be sustained."

18. That was also followed by a learned single Judge of this Court in Erode District Central Co.operative Bank Ltd., rep. By its General Manager, Erode vs. Velayuthasamy Rice Mill rep. By its Proprietor, Chinnapalayam, Erode and others (2007 (4) MLJ 927), wherein the learned Judge (V.Ramasubramanian,J.), after referring to the judgment of the Supreme Court as well as the Division Bench judgment of this Court, held as follows:
" 6. Mr.N.Manokaran, learned counsel for the respondents 1 and 2 contended that the Court had discretionary power to award interest at the rate of 6% p.a. from the date of the decree despite the contractual rate of interest being incorporated in the agreements. The learned counsel relied upon the decision of the Supreme Court in N.M.Veerappa vs. Canara Bank and Others AIR 1998 SC 1101 : (1998) 2 SCC 317, which was also followed by the Division Bench of this Court in A.S.Ramakrishnan vs. Bank of Baroda, Madurai 2001 (1) CTC 662 : (2001) 1 MLJ 665.
7. On a perusal of the aforesaid judgments of the Supreme Court and the Division Bench of this Court, it is clear that the Civil Court's jurisdiction to restrict the rate of interest to 6% p.a. from the date of the plaint or the date of the award is not actually curtailed by any prohibition in the contract. The appellate Tribunal has actually exercised such discretion in reducing the rate of interest. Therefore, it cannot be found fault with."

19. While construing the term "may" in Order XXXIV Rule 11 of CPC, the Division Bench of this Court in Syndicate Bank vs. Swadesamitran Ltd., (1990 (1) MLJ 19), held as follows:
"7. We may observe that under Order 34 R.11 CPC the Court may order payment of interest as indicated thereunder. The use of the expression 'may' indicates that it is not intended that in all cases, the Court is obliged to decree interest at the contractual rate. A certain amount of discretion in undoubtedly vested in the Court so far as the payment of interest pendente lite and subsequent interest is concerned. If, the Court was bound, as claimed by learned counsel for the appellant, even under O.34, Rule 11, CPC to award pendente lite interest at the contractual rate, then the language employed would have been different and the expression 'may' would not at all have been used. The expression 'may' used also postulates that the Court is not bound to exercise its powers relating to the award of interest and the language as it is found in O.34 Rule 11 CPC can only mean that the court has a discretion to order the payment of interest either at the contractual rate or even at a rate which the Court deems reasonable, having regard to the circumstances of the case. We may in this connection refer to the decisions relied on by learned counsel for the respondent. In Jaigobind Singh v. Lachmi Narain AIR 1940 FC 20, interpreting the provisions of O.34 R.11 CPC the Federal Court pointed out that the special provision under O.34 R.11,CPC gives a certain amount of discretion to the Court in so far as interest pendente lite and subsequent interest are concerned and it is no longer absolutely obligatory on the part of the Court to decree interest at the contractual rate in all circumstances, even if there be no question of the rate of interest being penal, excessive or substantially unfair. The principle so laid down by the Federal Court was re-affirmed by the Supreme Court in the decision reported in Soli Pestonji Majoo v. Ganga Dhar, AIR 1969 SC 600. Referring to

O.34, R.11, C.P.C. and the decision of the Federal Court in Jaigobind Singh v. Lachmi Narain, AIR 1940 F.C.20, the Supreme Court pointed out that the new Rule under O.34, R.11, CPC inserted by the amending Act 21 of 1929 gave a certain amount of discretion to the Court so far as interest pendente lite and subsequent interest are concerned. Again in Pentala Githavaradhana Rao v. Andhra Bank Ltd., AIR 1975 AP 245, the principle laid down in the decision of the Supreme Court in Soli Pestonji Majoo v. Ganga Dhar, AIR 1969 SC 600 was applied and it was laid down that there is no obligation cast on the Court to award pendente lite and subsequent interest only at the contractual rates and that Courts have a discretion vested so far as the interest payable subsequent to the date of suit is concerned. To similar effect is the decision reported in Punjab National Bank v. Udyog Silpa Pvt. Ltd., AIR 1979 Orissa 30, where it has been pointed out that O.34, R.11 CPC is not mandatory in character and it is open to a Court to vary the rate of interest so far as the period between the date of suit and the date fixed for redemption in a preliminary decree is concerned, even in a case where the interest is legally recoverable and the rate of interest is not penal, unconscionable or otherwise excessive. Thus, on a consideration of the language employed in O.34, R.11 CPC and the interpretation thereof in the manner aforesaid by the decisions referred to earlier, we are of the view that even in a case to which the provision under O.34 R.11 CPC stands attracted, the Court has in it, a discretion to award pendente lite and post-decree interest at a rate lesser than the contractual rate."

In such circumstances, the contention of the learned counsel for the petitioner that the discretion exercised by the Tribunal under Section 152 of the Act is improper in respect of the interest is not sustainable. In so far as it relates to the waiver of penal interest, the Tribunal on fact found that the first respondent is entitled to and that should be considered by the Registrar and accordingly, remanded the matter to the Registrar, which, in my view, is correct and therefore, there is no scope to interfere with the judgment of the 4th respondent. Accordingly, the writ petition fails and the same is dismissed. No costs. Connected miscellaneous petition is closed.

Index:Yes/No
Internet:Yes/No
Kh 04.12.2009

To
1.The Registrar of Co.operative
Societies (Housing)
Salem Region
179, Adhwaitha Ashram Street
Opp.New Bus Stand
Salem 3.

2.The Co.operative Housing Arbitrator
The Nasiyanur Co.operative
Housing Society Ltd.,
Nasiyanur, Erode Taluk.

3.The Principal District Judge
Erode District, Erode.

P.JYOTHIMANI,J.

P.D.Order in
W.P.No.1928 of 2008

Dated:04.12.2009